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15 JANET NAPOLITANO, as Secretary of the  
16 Department of Homeland Security

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

FRANK JOSEPH CARDERELLA,

No. CV09-8299 R (MANx)

Plaintiff,

DECLARATION OF LINDA M.  
SMITHSON IN SUPPORT OF  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT, OR, IN THE  
ALTERNATIVE, MOTION FOR  
SUMMARY ADJUDICATION

v.

JANET NAPOLITANO, as Secretary  
of the Department of Homeland  
Security,

Defendant.

Date: September 20, 2010

Time: 10:00 a.m.

Ctrm: Spring Street Courthouse  
255 East Temple Street, Ctrm 8  
Los Angeles, California 90012

[Fed. R. Civ. Proc. 56; Local Rule 56-1]

Honorable Manuel L. Real

1 I, Linda M. Smithson, declare as follows:

2 1. I am the Supervisory Human Resources Specialist at the Department of  
3 Homeland Security – Immigration and Customs Enforcement (“ICE”). I started in  
4 INS/ICE on October 1, 1989 and have held this position since April 27, 1997. As to  
5 the following facts, I know them to be true of my own knowledge, or I have gained  
6 knowledge from ICE’s records, which were made at or about the time of the events  
7 recorded, and which are maintained in ICE’s ordinary course of business at or near the  
8 time of the acts, conditions or events to which they relate. Any such document or  
9 record was prepared in the ordinary course of business of ICE by a person employed  
10 by ICE, who had personal knowledge of the event being recorded and had a duty to  
11 accurately record such event. I know from my prior experience that these records are  
12 accurate and trustworthy. If called as a witness, I could and would testify competently  
13 thereto, under oath.

14 2. ICE has no records or files relating to a 1995-1996 vacancy  
15 announcement for a Immigration and Naturalization Service (“INS”) Detention  
16 Enforcement Officer (“DEO”). Moreover, based on file retention schedules for  
17 vacancy announcements during this time, any such records or files appear to have been  
18 destroyed.

19 3. Because ICE does not possess any records regarding the vacancy  
20 announcement at issue, ICE cannot determine how the position was advertised and  
21 which specific applicable file retention policy would have applied. During this period,  
22 however, the DEO position would have been advertised through one of three offices:  
23 Office of Personnel Management (“OPM”), INS Los Angeles Personnel Office, or INS  
24 Regional Personnel Office. If the DEO position had been advertised by OPM or the  
25 INS Regional Personnel Office, the Delegated Examining Unit Handbook, which  
26 applies to positions advertised through delegated examining open to all United States  
27 citizens, would have applied. If the DEO position had been advertised by the INS Los

1 Angeles Personnel Office, the MP&RP Plan, which is the merit promotion plan for  
2 bargaining unit employees, would have applied. Regardless of which office advertised  
3 the vacancy announcement and the applicable policy, however, each policy followed a  
4 two-year file retention schedule for vacancy announcements.

5       4. Since the relevant vacancy announcement occurred in 1995-1996, these  
6 records are past the two-year retention schedule under any of the applicable policies  
7 and appear to have been destroyed in accordance with that schedule.

8 I declare under penalty of perjury under the laws of the United States of America  
9 that the foregoing is true and correct and that this declaration was executed this  
10 17 th day of August 2010.

  
LINDA M. SMITHSON